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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
VS.	§	CIVIL ACTION NO. C-04-315
	§	
THREE HUNDRED SIXTY-NINE	§	
THOUSAND NINE HUNDRED EIGHTY	§	
DOLLARS (\$369,980.00) IN UNITED	§	
STATES CURRENCY,	§	
	§	
Defendant.	§	

**ORDER GRANTING IN PART AND DENYING IN PART MOTION TO COMPEL**

On May 2, 2005, Claimants Abdiel and Francelia Garcia filed a motion to compel discovery (D.E. 33). A response was filed May 20, 2005 (D.E. 46). The motion was referred to undersigned United States Magistrate Judge for review and decision. A hearing was held Wednesday, June 1, 2005.

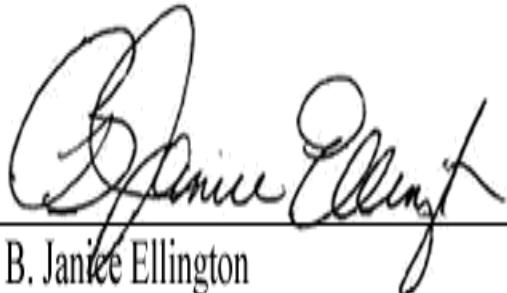
During depositions, government witnesses and counsel for the plaintiff promised to provide to Claimants the following: (1) phone records of the Claimants which witness Saenz obtained by subpoena; (2) CMIR reports which were referenced during the deposition of IRS-CID Agent Ed Dubberke; and (3) photos not already produced. At the hearing on June 1, counsel for plaintiff represented that the documents and photos do not exist. As plaintiff has a continuing duty to disclose these records which were promised to Claimants during depositions, the motion to compel is granted as to Items #1-3 above. Plaintiff is ordered to produce the documents and photos within fourteen days of the date of this order, or to produce an affidavit

that a search has failed to locate the items. Plaintiff is ordered to produce for Claimants a readable copy of the CTR reports.

Claimants also moved to compel production of the records of the dog and dog handler. It is undisputed that the records were improperly requested in a notice of deposition instead of in a subpoena duces tecum. It is undisputed that counsel for plaintiff formally objected to the form of the request during a deposition of the dog handler in late January. In spite of this formal objection, no proper subpoena duces tecum was ever served on the witness, no request to extend the January 31, 2005, discovery deadline was filed, and the motion to compel was not filed until May 2, 2005, two weeks before the scheduled May 16th trial date. The motion to compel, as it relates to the dog and dog handler records, is denied as untimely.

The request for sanctions is denied.

ORDERED this 1st day of June, 2005.



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B. Janice Ellington  
United States Magistrate Judge